

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY**

IN RE:	CASE NO. 11-50274
MICHAEL L. MONTE,	
Debtors.	JUDGE FRANK W. VOLK
CONSERVIT, INC.,	ADVERSARY PROC. NO. 5:15-05003
Plaintiff,	
v.	
MICHAEL L. MONTE,	
Defendant.	

**MEMORANDUM OPINION AND ORDER**

Pending is Defendant Michael L. Monte's motion to dismiss for failure to state a claim upon which relief may be granted. The motion was filed today. Trial is scheduled for December 7, 2015.

On July 27, 2015, the Court entered a scheduling order setting September 30, 2015, as the deadline for motions pursuant to Federal Rule of Bankruptcy Procedure 7012(b). The scheduling order additionally provided that, "Any motion . . . must be supported by a memorandum at the time filed or submitted . . . ." (Ord. at 1).

Respecting the subject of modifications to the scheduling order, paragraph 9 provided as follows:

9. Changes in Above Times: Should counsel for any party desire any change in the time limitations set forth herein, such party may move for modifications thereof within twenty-one (21) days after the date this Order is entered. Absent any such

2

motion, the time limitations set forth above shall not be altered except upon showing of good cause and by Order of this Court.

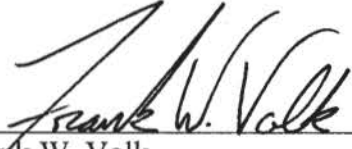
(*Id.* at 2). On August 10, 2015, the Court entered the parties' Agreed Order Modifying Scheduling Order, which set an October 30, 2015, revised deadline for dispositive motions.

Pursuant to Rule 16(b)(4), "[a] schedule may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b); *Nourison Rug Corp. v. Parvizian*, 535 F.3d 295, 298 (4th Cir. 2008). The instant motion to dismiss is based upon the ground that the operative pleading fails to plead fraud with particularity. That ground for dismissal was available to Mr. Monte well in advance of the October 30, 2015, deadline for dispositive motions. Good cause to amend the dispositive motion deadline has thus not been shown.

Based upon the absence of good cause, and the missing memorandum of law, it is **ORDERED** that the motion to dismiss be, and is hereby, **DENIED**.<sup>1</sup>

The Clerk's Office shall transmit a copy of this written opinion and order to counsel of record.

DATED: December 7, 2015

  
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Frank W. Volk  
United States Bankruptcy Judge

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<sup>1</sup> It further appears that counsel have not complied with paragraph 4 of the July 27, 2015, scheduling order. They are directed to do so forthwith and in no event later than December 9, 2015.